

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7012
BILL NUMBER: HB 1276

NOTE PREPARED: Mar 16, 2008
BILL AMENDED: Feb 21, 2008

SUBJECT: Bail.

FIRST AUTHOR: Rep. Pflum
FIRST SPONSOR: Sen. Paul

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It defines "sexually violent predator defendant" as a person charged with the commission of a sex or violent offense who is already a sexually violent predator and charged with a subsequent crime that is included under the sexually violent predator definition.
- B. It allows a: (1) sexually violent predator defendant; (2) person charged with child molesting who has no prior history of sex crimes; and (3) person charged with child solicitation who has no prior history of sex crimes; to be released on bail only after a hearing in open court, and requires a court releasing one of these persons on bail to consider whether certain statutory factors warrant exceeding applicable court or county bail guidelines.
- C. It requires a bail hearing to be held within 48 hours unless exigent circumstances prevent the hearing from being held within 48 hours.

Effective Date: July 1, 2008.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) This bill would likely have a minimal effect on county jail populations.

LSA found no data about criminal defendants who awaited trial and remained in jail compared to the number of defendants who were released from prison. However, the Department of Correction (DOC) does report

on the number of offenders who were committed to DOC facilities and whether they received a jail term credit.

LSA identified 1,090 offenders who were committed to DOC in FY 2007 for a criminal offense that would qualify as an offense under the sexually violent predator statute. Of these offenders, 1,013 (93%) had a jail credit of one day or more while 77 had no jail credit and were presumably released on bail prior to a court hearing. Requiring each criminal defendant to remain in jail until the court has an open hearing would require a defendant to remain in jail for a maximum 48 hours as specified by this bill, or longer under exigent circumstances.

These 77 offenders were in 35 different counties. Consequently, there are few defendants in any particular jail. Thus, this additional requirement would likely have a minimal effect on jail population and overcrowding.

Offenders Qualifying as Sexually Violent Predators Committed to DOC Facilities in FY 2007					
	No. of Offenders	No. with Jail Term	No. with No Jail Term	% with Jail Credit	Average No. of Credit Days
Aid in Cause Offense	1	1	-	100%	74.0
Att. Commit Felony	45	42	3	93%	430.0
Child Exploitation	23	19	4	83%	144.4
Child Molesting	419	389	30	93%	186.3
Child Seduction	2	2	-	100%	101.0
Child Solicitation	16	15	1	94%	89.0
Criminal Deviate Conduct	31	29	2	94%	156.3
Criminal Confinement	143	131	12	92%	111.1
Kidnapping	8	8	-	100%	324.3
Murder	86	82	4	95%	453.3
Rape	57	55	2	96%	227.1
Sex Misconduct-Minor	177	164	13	93%	137.5
Sexual Battery	41	38	3	93%	79.0
Vicarious Sex Gratification	13	11	2	85%	92.5
Voluntary Manslaughter	28	27	1	96%	507.3
Total	1,090	1,013	77	93%	203.8

Background: This bill refers to the term sexually violent predator and requires the court to consider the factors described in IC 35-33-8-4 when determining whether bail should be set. The definition of a sexually violent predator is described below. This section also includes the specific factors for a court to consider under IC 35-33-8-4 when imposing bail amounts.

Sexually Violent Predator Definition – Offenses which make a person a sexually violent predator include:

1. Rape (IC 35-42-4-1).
2. Criminal deviate conduct (IC 35-42-4-2).
3. Child molesting (IC 35-42-4-3).
4. Child exploitation (IC 35-42-4-4(b)).
5. Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
6. Child solicitation (IC 35-42-4-6).
7. Child seduction (IC 35-42-4-7).
8. Sexual misconduct with a minor as a Class A, Class B, or Class C felony (IC 35-42-4-9), unless the person is convicted of sexual misconduct with a minor as a Class C felony; the person is not more than four years older than the victim if the offense was committed after June 30, 2007; or five years older than the victim if the offense was committed before July 1, 2007; and the sentencing court finds that the person should not be required to register as a sex offender.
9. Incest (IC 35-46-1-3).
10. Sexual battery (IC 35-42-4-8).
11. Kidnapping (IC 35-42-3-2), if the victim is less than 18 years of age, and the person who kidnapped the victim is not the victim's parent or guardian.
12. Criminal confinement (IC 35-42-3-3), if the victim is less than 18 years of age, and the person who confined or removed the victim is not the victim's parent or guardian.
13. Possession of child pornography (IC 35-42-4-4(c)).
14. Promoting prostitution (IC 35-45-4-4) as a Class B felony.
15. Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than 18 years of age.
16. Sexual trafficking of a minor (IC 35-42-3.5-1(b)).
17. Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than 18 years of age.
18. An attempt or conspiracy to commit a crime listed in subdivisions (1) through (17).

IC 35-33-8-4 Statutory Factors Affecting Bail Decisions:

Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall take into account all facts relevant to the risk of nonappearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and his ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring him to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;
- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;

(8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance; and

(9) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring him to trial.

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Trial courts; county jails.

Information Sources: Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.